THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 1023 OF 2007

Dated 4th October, 2007

Between:

D.Narayana Swamy.

…Petitioner.

And

The Principal Secretary, Revenue (Regn.II)
Department, Government of Andhra Pradesh
and another.

…Respondents.

ORAL ORDER:

In this writ petition, the petitioner questioned the communication dated 23.11.2006 in Lr.No.NR/15750/2006 issued by the Commissioner and Inspector General of Registration and Stamps, Andhra Pradesh, by which, the request of the petitioner for renewal of the Certificate of Practice issued under the Notaries Act was rejected and the name of the petitioner was ordered to be removed from the Notaries Register maintained under the Notaries Act, 1952.

The petitioner-Advocate, aged about 73 years was appointed as a Notary and consequent to his appointment the Certificate of Practice was issued to him. The latest certificate issued to him was valid up to 29th December, 2005. But, however, after paying necessary fees, he made an application for renewal of the Certificate on 19.1.2006. Even in the application submitted by him for renewal, it was stated that the earlier Certificate of Practice was valid up to 29.12.2005, but, however, he could not file the application for renewal before the expiry of the said date on account of illness suffered by him. The impugned order is passed referring to Section 10 of the Notaries Act by the Commissioner and Inspector-General of Registration and Stamps rejecting the request of the petitioner and removing the name of the petitioner from the Notaries Register.

In this writ petition, it is the case of the petitioner that even as per the provisions of the Notaries Act and the Rules made thereunder, there is no specific provision or the rule obligating to file an application before the expiry of the Certificate of Practice. It is

submitted that as much as the application was not filed before the expiry of the validity of the certificate, for the reasons beyond the control of the petitioner as he was not keeping good-health, the respondents should have considered the application for renewal on its merits without rejecting the same on the technical ground, namely, that application was filed after expiry of the validity of the Certificate. In support of the said contention, learned counsel for the petitioner relied on a decision of the Gujarat High Court in **Firoz M.Battiwala (Advocate), Petitioner v. State of Gujarat and another, Respondents**[1]**.**

On the other hand, counter affidavit is filed by the respondents stating that as much as even according to the petitioner, validity was only up to 28.12.2005 and the petitioner remitted the prescribed fees of RS.500/- in the Government Treasury Account on 18.1.2006 and submitted the application for renewal thereafter, renewal was rejected and his name was ordered to be removed from the Notaries Register, in exercise of the power under Section 10 (b) of the Notaries Act, 1952.

Entry of names in the Register and issue or renewal of certificates of practice are governed by the provisions of Section 5 of the Notaries Act, 1952, according to which, the Government appointing the notary, may, on receipt of an application and the prescribed fee, renew the certificate of practice of any notary for a period of five years at a time. The Government can also remove the notary from the Register maintained by it in the circumstances contemplated under Section 10 of the Act.

In the instant case, it is the case of the petitioner that though the Certificate of Practice was valid up to 28.12.2005, but, however, in the application for renewal itself, he has stated that due to ill-health he could not make application before the expiry of the validity of the Certificate of Practice issued to him. In the absence of any

specific provision for making application in a particular time, the respondents should have considered the plea of the petitioner that the application was not filed within the specified time due to reasons stated by him. In the judgment relied on by the learned counsel for the petitioner in **Firoz M.Battiwala (Advocate), Petitioner v. State of Gujarat and another, Respondents (1 supra)** also, it was held that in the absence of a legal provision prescribing any period of limitation for making an application for renewal of notary certificate, rejection of the application made within a reasonable time is not proper. The ratio laid down in the said case applies on all fours to the case on hand. In the instant case, the application for renewal was delayed only by a few days, which cannot be said as an unreasonable delay, and, in the very application itself, the petitioner has stated that the said delay was only on account of his ill-health. In that view of the matter, I am of the view that the application of the petitioner for renewal of the Certificate of Practice was not considered in proper perspective by the respondents as the impugned order of rejection and removal of the name of the petitioner from the Notaries Register maintained under the Notaries Act, 1952 was passed by merely referring to Section 10 of the Act.

For the reasons aforementioned, the impugned order is liable to set aside and is accordingly set aside. There shall be a direction to the respondents to consider the application of the petitioner afresh without reference to the ground that the application was filed after the expiry of the validity of the Certificate of Practice and pass appropriate orders within a period of six weeks from the date of the receipt of a copy of this order.

The writ petition is allowed to the extent indicated above. There shall be no order as to costs.

4-10-2007 **R.SUBHASH REDDY, J.**

VR

[1] AIR 2000 GUJARAT 304